

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

David A. McDougall, *Individually and as
Trustee for the Next-of-Kin of Decedent
Cynthia A. McDougall,*

Civil No. 20-1499 (JRT/LIB)

Plaintiff,
v.
CRC Industries, Inc., and John Doe
Company Defendants #1-10

**STIPULATION TO SUPPLEMENT THE
RECORD WITH DRAFT JURY
INSTRUCTIONS AND DRAFT SPECIAL-
VERDICT FORMS**

Defendants.

WHEREAS, the parties filed proposed jury instructions and special-verdict forms;

WHEREAS, to facilitate discussion about proposed jury instructions and special-verdict questions, a Court clerk circulated to the parties by email iterative drafts of jury instructions and special-verdict forms, which the parties viewed and discussed on the record and at various times;

WHEREAS, those drafts emailed to the parties have not been filed;

WHEREAS, the parties desire to supplement the record with those drafts to ensure a clear record, including as to what was specifically discussed at various times;

WHEREAS, those drafts are attached to this stipulation as exhibits, as follows:

1. "1st Draft" jury instructions (**Exhibit A**) and a "1st Draft" special-verdict form (**Exhibit B**), which a court clerk emailed to the parties' counsel on April 9, 2024, at 5:31 p.m., stating: "Attached please find the Court's first draft of the final jury

instructions and special verdict. The highlighted and bracketed sections are instructions or questions that only party proposed, or else indicate added or different language between the proposed instructions that the parties submitted. I look forward to meeting on Thursday to discuss these documents”;

2. “2nd Draft” jury instructions (**Exhibit C**), which a court clerk emailed to the parties’ counsel on April 15, 2024, at 12:41 p.m., stating, “The Court’s second draft of jury instructions are attached. Unresolved instructions/language are highlighted and bracketed”;

3. “3rd Draft” jury instructions (**Exhibit D**) and a “2nd Draft” special-verdict form (**Exhibit E**), which a court clerk emailed to the parties’ counsel on April 19, 2024, at 9:01 a.m., stating, “The Court’s most up-to-date drafts of the jury instructions and special verdict are attached. These will be the drafts discussed later this afternoon with the Court”;

4. “4th Draft” jury instructions (**Exhibit F**) and a “4th Draft” special-verdict form (**Exhibit G**), which a court clerk emailed to the parties’ counsel on April 19, 2024, at 2:46 p.m., stating, “Please find attached the Court’s fourth drafts of the jury instructions and special verdict (even though the special verdict is technically the third draft I’ve sent out, Judge Tunheim asked me to rename it so that the draft number is consistent with the jury instructions)”;

5. “5th Draft” jury instructions (**Exhibit H**) and a “5th Draft” special-verdict form (**Exhibit I**), which a court clerk emailed to the parties’ counsel on

April 23, 2024, at 1:29 p.m., stating, “Attached are the Court’s fifth drafts of the jury instructions and special verdict. The main changes are the added instructions and questions on pecuniary damages”;

6. “6th Draft” jury instructions (**Exhibit J**) and a “6th Draft” special-verdict form (**Exhibit K**), which a court clerk emailed to the parties’ counsel on April 24, 2024, at 8:41 a.m., stating, “Please find the Court’s sixth drafts of jury instructions and special verdict attached”;

7. “FINAL” jury instructions (**Exhibit L**) and a “FINAL” special-verdict form (**Exhibit M**), which a court clerk emailed to the parties’ counsel on April 24, 2024, at 9:41 a.m., stating, “Attached are the final drafts of jury instructions”;

8. “1st Draft” punitive-damages jury instructions (**Exhibit N**) and a “1st Draft” punitive-damages special-verdict form (**Exhibit O**), which a court clerk emailed to the parties on April 24, 2024, at 3:23 p.m., stating, “Attached are the Court’s instructions and special verdict on punitive damages. Judge Tunheim would like to meet with Counsel to discuss these drafts at 4pm today, if possible. Please respond back with whether this time works”;

9. “FINAL” punitive-damages jury instructions (**Exhibit P**) and a “FINAL” punitive-damages special-verdict form (**Exhibit Q**), which a court clerk emailed to the parties on April 24, 2024, at 5:29 p.m., stating, “Attached are the final drafts of the Court’s instructions and special verdict on punitive damages”;

NOW, THEREFORE, THE PARTIES STIPULATE:

1. The draft jury instructions and special-verdict forms attached as **Exhibits A-Q** to this stipulation and identified above are drafts that the parties received by email from a court clerk on the dates and at the times identified above.

2. The parties respectfully ask the Court to enter the proposed order included with this stipulation, thereby making these drafts part of the record.

ROBINS KAPLAN LLP

Dated: July 9, 2024

s/Michael D. Reif
Tara D. Sutton (#23199X)
Philip Sieff (#169845)
Rashanda C. Bruce (#0400019)
Michael D. Reif (#0386979)
Julie A. K. Reynolds (#0392426)
800 LaSalle Ave., Suite 2800
Minneapolis, MN 55402
Telephone: 612.349.8500
Facsimile: 612.339.4181
tsutton@robinskaplan.com
psieff@robinskaplan.com
rbruce@robinskaplan.com
mreif@robinskaplan.com
jreynolds@robinskaplan.com

Counsel for Plaintiff David McDougall

ARTHUR, CHAPMAN, KETTERING,
SMETAK & PIKALA, P.A.

Dated: July 9, 2024

s/Jeffrey M. Markowitz
Beth A. Jenson Prouty (#0389275)
Jeffrey M. Markowitz (#391959)
500 Young Quinlan Building

81 South Ninth Street
Minneapolis, MN 55402-3214
(612) 339-3500
baprouty@ArthurChapman.com
jmmarkowitz@ArthurChapman.com

Robert J. Gilbertson (# 22361X)
David J. Wallace-Jackson (# 288767)
Virginia R. McCalmont (# 399496)
FORSGREN FISHER MCCALMONT
DEMAREA TYSVER LLP
Capella Tower
225 South 6th Street, Suite 1500
Minneapolis, MN 55402
(612) 474-3300
bgilbertson@forsgrenfisher.com
dwallace-jackson@forsgrenfisher.com
vmccalmont@forsgrenfisher.com

Counsel for Defendant CRC Industries, Inc.